

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime prevention and Corrections

Division 8.5 California Prison Industry Authority

NOTICE IS HEREBY GIVEN that the California Prison Industry Authority (CALPIA) and the Prison Industry Board (PIB) pursuant to the authority granted by Penal Code (PC) Sections 2801 and 2808 in order to implement, interpret and make specific Penal Code 2808, propose to add section 8904 of Article 3, of the California Code of Regulations (CCR), Title 15, Division 8.5.

PUBLIC HEARING:

At this time, no public hearing has been scheduled concerning the proposed adoption to regulations. Anyone may request a public hearing by contacting the Contact Person set forth below. Requests for public hearings must be made no later than February 3, 2019.

PUBLIC COMMENT PERIOD:

The public comment period will close February 18, 2019. Any person may submit public comments regarding the proposed changes in writing. To be considered, comments must be received before the close of the comment period. Use one of the following to submit:

MAIL or HAND DELIVER

CALPIA/Legal Services Unit
560 East Natoma Street
Folsom, CA 95630

FAX

(916) 358-2709

E-MAIL

PIAregs@calpia.ca.gov

CONTACT PERSONS:

Please direct any inquiries regarding this action or questions of substance of the proposed regulatory action to:

M. Doherty, Regulatory Analyst
California Prison Industry Authority
560 East Natoma Street, Folsom, CA 95630
Telephone (916) 358-1711

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

C. Pesce, Administrative Assistant
California Prison Industry Authority
560 East Natoma Street, Folsom, CA 95630
Telephone (916) 358-1711

AUTHORITY AND REFERENCE

The California Prison Industry Authority (CALPIA) and the Prison Industry Board (PIB) pursuant to the authority granted by Penal Code (PC) Sections 2808, in order to implement, interpret and make specific Penal Code 2808, 2809, propose to add section 8904 of Article 3, of the California Code of Regulations (CCR), Title 15, Division 8.5.

INFORMATIVE DIGEST:

PIB is adding Section 8904 to provide notice and affirm the PIB's authority to approve CALPIA to provide recruitment and ongoing retention compensation incentives. The proposed regulatory action will allow PIB to implement its authority vested by the Legislature. In PC section 2808, the Legislature granted PIB powers equal to "all of the things that the board of directors of a private corporation would do" This regulatory action is necessary to implement, interpret, clarify and make specific Penal Code (PC) Section 2801. PC Sections 2801, 2808, and 2809 provide the PIB with implied rulemaking authority to establish regulations for developing and operating enterprises to employ prisoners. Pursuant to these statutes, the PIB has authority to provide recruitment and ongoing retention compensation incentives. In PC section 2809, the Legislature specified that the PIB has authority to provide recruitment and retention compensation for employees. The PIB and CALPIA intend to provide incentive compensation as necessary to fulfill its mission in any manner that PIB determines to be commercially reasonable and competitive with procurement systems used by private industry. The proposed regulation is reasonably necessary to effectuate the statute's purpose, and recruit and retain the most qualified staff.

POLICY STATEMENT OVERVIEW:

CALPIA proposes to add section 8904 to Title 15, Division 8.5, titled Compensation to expressly notice and affirm the authority of the Prison Industry Board (PIB) to authorize a recruitment and ongoing compensation differential to employees. CALPIA is currently in the process of recruiting a General Manager upon the retirement of the current General Manager in January 2019.

In addition, in various other positions, CALPIA has vacancies that are continuing to rise and require competitiveness to recruit and retain staff. For example, CALPIA has position authority for a total of 446 positions in the Custodian (CF) series. Since 2015, there has been more than a 400% increase in positions for this classification. This number of personnel will continue to increase as the Health Care Facilities Improvement Projects (HCFIP) continues to complete new construction of medical space and buildings statewide. With the projected increase in square footage, a 38% vacancy rate is anticipated. CALPIA has a turnover rate of 49%, in part due to workers taking positions both inside and outside of civil service which offer a higher salary and incentives. In order to recruit the most qualified individual and to reach a broad segment of qualified and skilled professionals, it is necessary to affirm the PIB's authority to authorize a recruitment and ongoing compensation differential to employees.

In 1982, the California Legislature restructured the Department of Corrections' industries and vocational training program abolishing the Correctional Industries Commission and replacing it with the newly created Prison Industry Authority (PIA) (subsequently renamed CALPIA) under the direction of the Prison Industry Board. The Legislature established the Prison Industry Board as autonomous from the Department of Corrections. In 1982, the new Prison Industry Authority was given independent autonomy.

CALPIA is tasked with operating similar to a private business, established for the mission of providing training, skills, and employment to inmates in order to reduce recidivism upon release from incarceration. The PIB has the authority to do all the things that a private board of directors would do such as hiring a CEO who reports to the board of directors. Therefore, this change will better address the desire to reach the most qualified applicants and retain the most qualified candidate for this position. Without additional recruitment incentives and ongoing incentive compensation, many qualified applicants may not apply, and the PIB and CALPIA lose the opportunity to reach the most qualified applicants and retain the most qualified candidates for its workforce. As CALPIA competes

directly with the private sector in its staff recruitments recruitment incentives and ongoing incentive compensation will increase the competitiveness of CALPIA in its executive search.

Using recruitment incentives and ongoing incentive compensation also addresses the State Auditor's findings issued in its report regarding the challenges of State agencies with a workforce of approximately 41% within potential reach of retiring, as they are age 50 or older. See State Auditor's Report 2015-608, titled "State Departments Need to Improve Their Workforce and Succession Planning Efforts to Mitigate the Risks of Increasing Retirements." In addition, as of October 2018, California's unemployment rate is at a low of 3.5% making it timely to more competitively recruit staff with recruitment incentives and ongoing incentive compensation.

Anticipated Benefits

Will continue to provide a nonmonetary benefit for the protection and safety of public health and safety, by ensuring ongoing efficiency of operations, employment for inmate workers, and providing work experiences for inmate workers to utilize upon release from custody.

- Will allow more effective recruitment and retention of staff to support CALPIA operations.
- Will reduce CALPIA's position vacancy rate and provide additional employment opportunities to the public.
- Staff may save these earnings, add them to retirements accounts, or otherwise use them in the state, national, or worldwide economy.

This proposed regulatory action will benefit CALPIA by providing recruitment and ongoing retention compensation incentives to compete with the private marketplace to meet CALPIA's labor and staffing needs. **Thus, this proposed action benefits the public and general welfare.**

Evaluation of Inconsistency/Incompatibility with Existing Regulations:

During the process of developing this regulation, the PIB has conducted a search of any similar regulations on this topic and has concluded that the proposed regulatory action is neither inconsistent nor incompatible with existing laws and regulations.

Local Mandates:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500 through 17630.

Fiscal Impact Statement:

Cost to any local agency or school district that is required to be reimbursed in accordance with Government Code Sections 17500 through 17630:.....None
Cost or savings to any state agency:None
Other nondiscretionary cost or savings imposed on local agencies:None
Cost or savings in federal funding to the State:None

Effect of Housing Costs:

The PIB has made an initial determination that the proposed action will have no significant effect of housing costs.

Significant Statewide Adverse Economic Impact on Business:

The PIB has determined that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to

compete with businesses in other states because they are not affected by the internal management of CALPIA employees.

Results of the Economic Impact Analysis/Assessment

In accordance with the Government Code Section 11346.3(), CALPIA has made the following assessments regarding the proposed regulation:

Benefits of the Proposed Action:

As stated above under the Informative Digest and Policy Statement Overview, the benefits of the regulatory action include:

- Nonmonetary benefit for the protection and safety of public health and safety.
- Supports and ensures ongoing efficiency of operations.
- By effective operations through incentive compensation, promotes continued employment for inmate workers.
- By effective operations through incentive compensation, promotes and provides work experiences for inmate workers to utilize upon release from custody.
- Will allow more effective recruitment and retention of staff to support CALPIA operations.
- Will reduce CALPIA's position vacancy rate and provide additional employment opportunities to the public.
- Staff may save these earnings, add them to retirements accounts, or otherwise use them in the state, national, or worldwide economy.

This proposed regulatory action will benefit CALPIA by providing recruitment and ongoing retention compensation incentives to compete with the private marketplace to meet CALPIA's labor and staffing needs. **Thus, this proposed action benefits the public and general welfare.**

Creation or Elimination of Jobs within the State of California

The PIB has determined that the proposed regulatory action will have no impact on the creation or elimination of existing jobs within California because those jobs are not affected by the internal management of CALPIA employees.

Creation of New Businesses or Elimination of Existing Businesses within the State of California

This proposed regulatory action will have no effect on the creation of new or elimination of existing businesses within California because those businesses are not affected by the internal management of CALPIA employees.

Expansion of Businesses Currently Doing Business within the State of California

This proposed regulatory action will have no effect on the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of CALPIA employees.

Cost Impacts on Representative Private Persons or Businesses

CALPIA is not aware of any cost impacts that a representative, private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Small Businesses

CALPIA has determined that this action has no significant adverse economic impact on small business because they are not affected the internal management of CALPIA inmate workers.

Consideration of Alternatives

CALPIA has determined that no reasonable alternative considered by CALPIA, or that has otherwise been identified and brought to the attention of CALPIA, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective implementing the statutory policy or other provision of law. Interested persons are invited to submit written statements or arguments with respect to any alternatives to the changes proposed during the written comment period.

Reports Relied Upon None.

Availability of Proposed Text, Initial Statement of Reasons, and Rulemaking Record; Documents on CALPIA's Website

The Proposed Text, Initial Statement of Reasons, and all the information upon which this proposal is based have been placed in the rulemaking record, which is available to the public upon request directed to the CALPIA's contact person. The documents will also be made available on the CALPIA website: www.calpia.ca.gov.

Availability of Changes to Proposed Text

After considering all timely and relevant comments received, the PIB may approve the proposed regulations substantially as described in this Notice. If CALPIA makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the PIB reviews and approves the regulations as revised. CALPIA will accept written comments on the modified regulations for 15 days after the date on which they are made available. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice or can be viewed by visiting CALPIA's website: www.calpia.ca.gov.

Availability of the Final Statement of Reasons

Following its preparation, a copy of the Final Statement of Reasons may be obtained from CALPIA's contact person or by visiting the CALPIA website: www.calpia.ca.gov.